

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**ANDREW YAO**

**Defendant.**

**Criminal Action No. 6-27-GMS**

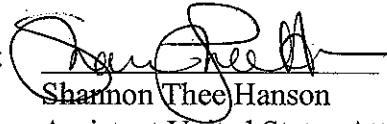
**JOINT REQUEST FOR JURY INSTRUCTIONS**

The parties, through undersigned counsel hereby move the Court to consider the following jury instructions. The parties also reserve the right to request a modification of the instructions herein provided or to request any other such additional instructions suggested by the evidence.

Respectfully submitted,

COLM F. CONNOLLY  
United States Attorney

By:



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Dated: February 22, 2007

**GENERAL**

**INTRODUCTION**

Members of the jury, now it is time for me to instruct you about the law that you must follow in deciding this case.

I will start by explaining your duties and the general rules that apply in every criminal case.

Then I will explain the elements, or parts, of the crime that the defendant is accused of committing.

Then I will explain some rules that you must use in evaluating particular testimony and evidence.

And last, I will explain the rules that you must follow during your deliberations in the jury room, and the possible verdicts that you may return.

Please listen very carefully to everything I say.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, § 1.01 (2005).

### **JURORS' DUTIES**

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you saw and heard here in court. Deciding what the facts are is your job, not mine, and nothing that I have said or done during this trial was meant to influence your decision about the facts in any way.

Your second duty is to take the law that I give you, apply it to the facts, and decide if the Government has proved the defendant guilty beyond a reasonable doubt. It is my job to instruct you about the law, and you are bound by the oath that you took at the beginning of the trial to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions that I gave you before and during the trial, and these instructions. All the instructions are important, and you should consider them together as a whole.

The lawyers may have talked about the law during their arguments. But if what they said is different from what I say, you must follow what I say. What I say about the law controls.

Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way.

### **NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, § 1.02 (2005).

**PRESUMPTION OF INNOCENCE  
BURDEN OF PROOF  
REASONABLE DOUBT**

As you know, the defendant has pleaded not guilty to the crimes charged in the Indictment. The Indictment is not any evidence at all of guilt. It is just the formal way that the Government tells the defendant what crimes he is accused of committing. It does not even raise any suspicion of guilt.

Instead, a defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that he is innocent. This presumption of innocence stays with him unless the Government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that he is guilty.

This means that a defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the Government to prove that he is guilty, and this burden stays on the Government from start to finish. You must find the defendant not guilty unless the Government convinces you beyond a reasonable doubt that he is guilty.

The Government must prove every element of the particular crime charged beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate

to rely and act on it in making the most important decisions in your own lives. If you are convinced that the Government has proved a defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §1.03 (2005).

**EVIDENCE DEFINED**

You must make your decision based only on the evidence that you saw and heard here in court. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

The evidence in this case includes only what the witnesses said while they were testifying under oath; the exhibits that I allowed into evidence; the stipulations that the lawyers agreed to [;and the facts that I have judicially noticed].

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their questions and objections are not evidence. My legal rulings are not evidence. And my comments and questions are not evidence.

[if necessary During the trial I did not have let you hear the answers to some of the questions that the lawyers asked. I also ruled that you could not see some of the exhibits that the lawyers wanted you to see. And sometimes I ordered you to disregard things that you saw or heard, or I struck things from the record.] You must completely ignore all of these things. Do not even think about them. Do not speculate about what a witness might have said or what an exhibit might have shown. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

Make your decision based only on the evidence, as I have defined it here, and nothing else.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §1.04 (2005).

**CONSIDERATION OF EVIDENCE**

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §1.05 (2005).

**DIRECT AND CIRCUMSTANTIAL EVIDENCE**

Now, some of you may have heard the terms "direct evidence" and "circumstantial evidence."

Direct evidence is simply evidence like the testimony of an eyewitness which, if you believe it, directly proves a fact. If a witness testified that he saw it raining outside, and you believed him, that would be direct evidence that it was raining.

Circumstantial evidence is simply a chain of circumstances that indirectly proves a fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude that it was raining.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, nor does it say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §1.06 (2005).



### **CREDIBILITY OF WITNESSES**

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness's testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events. Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

(B) Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

(D) Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

(E) Ask yourself if the witness had any relationship to the government or the defendant, or anything to gain or lose from the case, that might influence the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

[(F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether

the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.]

(G) And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

(3) These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.

### **NOTES**

Pattern Criminal Jury Instructions, 6th Circuit §1.07 (2005)

## **NATURE OF THE CHARGES**

### **INTRODUCTION**

That concludes the part of my instructions explaining your duties and the general rules that apply in every criminal case. In a moment, I will explain the elements of the crimes that the defendant is accused of committing.

But before I do that, I want to emphasize that the defendant is only on trial for the particular crimes charged in the Indictment. Your job is limited to deciding whether the Government has proved the crimes charged.

### **NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §2.01 (2005).

**SEPARATE CONSIDERATION--SINGLE DEFENDANT**

**CHARGED WITH MULTIPLE CRIMES**

The defendant has been charged with two crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. It is your duty to separately consider the evidence that relates to each charge, and to return a separate verdict for each one. For each charge, you must decide whether the Government has presented proof beyond a reasonable doubt that the defendant is guilty of that particular charge.

Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on the other charge.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §2.01A (2005).

**GENERAL INFORMATION REGARDING BANKRUPTCY LAWS**

The counts against the defendant in the Indictment charge violations of certain provisions of the bankruptcy fraud statute, Title 18, United States Code, Section 152. Before I instruct you on the elements of this bankruptcy crime, I will give you some instructions on bankruptcy law in general.

A bankruptcy case is initiated by the filing of a bankruptcy petition. The person, entity or business on whose behalf the bankruptcy petition is filed is called the “debtor.” The people, entities, or businesses that are owed money by the debtor or that have a claim against the debtor are called “creditors.” The United States Trustee Program is the component of the United States Department of Justice responsible for overseeing the administration of bankruptcy cases and private trustees.

The filing of a bankruptcy case creates an “estate.” The estate of the debtor includes all rights, title, share, or interest in property owned by the debtor at the time the bankruptcy petition is filed, known as the “assets” of the bankrupt estate. Bankrupt entities can attempt reorganization and continue to operate while under bankruptcy protection, which is known as a Chapter 11 bankruptcy. In a Chapter 11 case, the debtor stays in possession of its assets unless the bankruptcy court authorizes the appointment of a Chapter 11 trustee. If the bankruptcy court directs the appointment of a Chapter 11 trustee, then the United States Trustee appoints and supervises the Chapter 11 trustee, who then takes possession of the debtor's assets and runs the corporation. In the alternative, a corporation in bankruptcy can decide not to continue business operations and can seek to repay its creditors by selling the assets of the estate. In the event a Chapter 11 case is later converted by the bankruptcy court to a Chapter 7 case, the United States Trustee appoints a Chapter 7 Trustee to administer the debtor's bankruptcy estate, including the liquidation/sale of assets and their distribution to creditors.

Generally, the filing of the bankruptcy petition operates to stay any action by creditors on their claims against the debtor and its property. For instance, a creditor may not commence or continue any judicial or administrative action or proceeding against the debtor, nor may a creditor enforce, against the debtor or the property of the debtor's estate, a judgment obtained before the petition was filed. A creditor may proceed against the debtor or the debtor's property only after requesting and obtaining from the bankruptcy court relief from the stay.

As part of the bankruptcy process, it is sometimes necessary for the trustees and/or creditors to interview or depose the insiders of a debtor corporation.

**BANKRUPTCY FRAUD: FALSE OATH**

The Indictment charges the defendant with committing two separate bankruptcy fraud crimes, specifically the Indictment alleges that the defendant knowingly and fraudulently made certain false oaths in connection with a bankruptcy, in violation of Title 18, United States Code, Section 152(2). Section 152(2) of Title 18 of the United States Code provides that:

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding . . .

shall be guilty of an offense against the laws of the United States.

In order to meet its burden of proof with regard to these crimes, the government must prove beyond a reasonable doubt each of the following elements:

First, that on or about the dates alleged in the Indictment there existed a proceeding in bankruptcy in the District of Delaware.

Second, that the defendant made a statement under oath in or in relation to that proceeding.

Third, that the statement concerned a material fact.

Fourth, that the statement was false.

Fifth, that the defendant made such statement knowingly and fraudulently, *the defendant adds, with the intent to defraud the trustee, the creditors, or the bankruptcy court.*

The first element that the government must prove beyond a reasonable doubt is that there existed a proceeding in bankruptcy under Title 11 of the United States Code. As to this element there is no issue since a stipulation has been entered in which the parties agree that there existed a proceeding in bankruptcy under Title 11 of the United States Code, to wit, *In re Student Finance Corporation*, 02-11620 (D. Del.), at the time the statements at issue were made.

The second element requires that the government prove beyond a reasonable doubt that a false statement was made under oath. A statement made under oath is one that is made under penalty of perjury. In other words, the government must prove beyond a reasonable doubt that the defendant's false statements as charged in the Indictment were made under oath. As to this element there is no issue since a stipulation has been entered in which the parties agree that the statements at issue were made under oath.

#### NOTES

*Adapted from* 2 O'Malley, Grenig, and Lee, Federal Jury Practice and Instructions § 26.07 (2007); Federal Criminal Jury Instructions of the Seventh Circuit, Section 152(2) & (3) (1999); Model Criminal Jury Instructions for the District Courts of the Eighth Circuit Section 6.18.152B (2003); *United States v. Gellene*, 182 F.3d 578, 588 (7<sup>th</sup> Cir. 1999) *citing* Collier on Bankruptcy, ¶ 7.02[2][a][iv] at 7-46 to 7-47; Pattern Criminal Jury Instructions, Seventh Circuit 152[5]. *See also* Sand, Siffert, Loughlin, Reiss, *Modern Federal Jury Instructions* Criminal, Instruction 15-11-15-16 (1998).



**BANKRUPTCY FRAUD: FALSE OATH - THIRD ELEMENT - MATERIALITY**

The third element that the government must prove beyond a reasonable doubt is that the statement concerned a material fact.

A matter is “material” if it has a natural tendency to influence, or is capable of influencing, the outcome of the bankruptcy proceeding. It is not necessary that the statement actually have that influence or be relied on by the court, the trustee, or the creditors, so long as it had the potential or capability to do so. A material fact is one which relates to the extent and nature of the debtor’s assets, or the business or financial transactions of the debtor, or to the discovery of assets, or to statements designed to secure an adjudication of bankruptcy. A material fact refers not only to the main fact which was the subject of the inquiry, but to any fact or circumstance which tends to corroborate or strengthen the proof introduced to establish the main fact.

Materiality in this context does not require harm to or adverse reliance by a creditor, nor does it require a realization of a gain by the defendant. Rather, it requires that the false oath or account relate to some significant aspect of the bankruptcy case or proceeding in which it was given, or that it pertain to the discovery of assets or to the debtor's financial transactions.

**NOTES**

*Adapted from 2 O’Malley, Grenig, and Lee, Federal Jury Practice and Instructions § 26.07 (2007); Federal Criminal Jury Instructions of the Seventh Circuit, Section 152(2) & (3) (1999); Model Criminal Jury Instructions for the District Courts of the Eighth Circuit Section 6.18.152B (2003); United States v. Gellene, 182 F.3d 578, 588 (7<sup>th</sup> Cir. 1999) citing Collier on Bankruptcy, ¶ 7.02[2][a][iv] at 7-46 to 7-47; Pattern Criminal Jury Instructions, Seventh Circuit 152[5]. See also Sand, Siffert, Loughlin, Reiss, Modern Federal Jury Instructions Criminal, Instruction 15-11-15-16 (1998).*

**BANKRUPTCY FRAUD: FALSE OATH - THIRD ELEMENT - MATERIALITY**

(DEFENDANT'S REQUEST)

*The Defendant requests the following materiality instruction. Those portions of the instruction below that are in bold are also in the government's instruction.*

**Materiality - Defined**

*A matter is "material" if it has a natural tendency to influence, or is predicably capable of influencing, the outcome of the bankruptcy proceeding. It is not necessary that the statement actually have that influence or be relied on by the court, the trustee, or the creditors. [ ]*

*Materiality in this context does not require harm to or adverse reliance by a creditor, nor does it require a realization of a gain by the defendant. Rather, it requires that the false oath or account relate to some significant aspect of the bankruptcy case or proceeding in which it was given, or that it pertain to the discovery of assets or to the debtor's financial transactions. It follows therefore that if the matter of concern is not pertinent to the discovery of assets or debtor's financial transactions, you cannot find the matter to be material. The expression of an opinion which is irrelevant cannot be material.*

**BANKRUPTCY FRAUD: FALSE OATH - FOURTH ELEMENT - FALSE STATEMENT**

The fourth element that the government must prove beyond a reasonable doubt is that the statement was false. The term "false statement" means a statement or an assertion which is known to be untrue when made or when used. The term "false" is not limited to affirmative misstatements, but can also mean any knowing omission of fact made with intent to deceive or conceal.

**NOTES**

*Adapted from 2 O'Malley, Grenig, and Lee, Federal Jury Practice and Instructions § 26.07 (2007); Federal Criminal Jury Instructions of the Seventh Circuit, Section 152(2) & (3) (1999); Model Criminal Jury Instructions for the District Courts of the Eighth Circuit Section 6.18.152B (2003); United States v. Gellene, 182 F.3d 578, 588 (7<sup>th</sup> Cir. 1999) citing Collier on Bankruptcy, ¶ 7.02[2][a][iv] at 7-46 to 7-47; Pattern Criminal Jury Instructions, Seventh Circuit 152[5]. See also Sand, Siffert, Loughlin, Reiss, Modern Federal Jury Instructions Criminal, Instruction 15-11-15-16 (1998).*

**BANKRUPTCY FRAUD: FALSE OATH - FIFTH ELEMENT: DEFENDANT ACTED**

**KNOWINGLY AND FRAUDULENTLY**

The fifth element that the government must prove beyond a reasonable doubt is that the defendant acted knowingly and fraudulently.

**Knowingly - Defined**

An act or a failure or act is done knowingly if it is done voluntarily and intentionally, and not because of mistake, accident or other innocent reason. The purpose of adding the word “knowingly” was to insure that no one would be convicted because of an act or a failure to act due to mistake or accident or other innocent reason.

**Fraudulently - Defined**

A statement is “fraudulent” if it was falsely made or made with reckless indifference as to its truth or falsity and made or caused to be made with an intent to deceive.

**NOTES**

Devitt & Blackmar, Federal Jury Practice and Instructions, § 49.16; O'Malley, Grenig, & Lee, *Fed. Jury Prac. & Instr.* §16.08 (5<sup>th</sup> Ed. 2007).

**BANKRUPTCY FRAUD: FALSE OATH - FIFTH ELEMENT: DEFENDANT ACTED  
KNOWINGLY AND FRAUDULENTLY (DEFENDANT'S VERSION)**

The fifth element that the government must prove beyond a reasonable doubt is that the defendant acted knowingly and fraudulently.

[The defendant requests the following "knowingly" instruction. Those portions of the defendant's requested instruction that are also in the government's instruction are in bold.]

**Knowingly - Defined**

*An act [] is done knowingly if it done voluntarily and intentionally and not because a mistake or accident or other innocent reason. In other words, an act is done knowingly if the defendant is aware of the act and is not committing the act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts were unlawful.<sup>1</sup>*

The defendant requests the following "fraudulently" instruction. Those portions of the defendant's requested instruction that are also in the government's instruction are in bold.

**Fraudulently - Defined**

*Fraud is an intentional or deliberate misrepresentation of the truth for the purpose of inducing another, in reliance on it, to part with a thing of value or to surrender a legal right. Fraud, then, is a deceit which, when perpetrated by words, conduct or silence is designed to cause another to act upon it to his or her legal injury.*

*A statement, claim or document is fraudulent if it was falsely made or with reckless indifference as to the truth or falsity and made or caused to be made with an intent to deceive.*

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<sup>1</sup>Adapted from O'Malley, Grenig and Lee, Federal Jury Practice and Instructions §17.04 (5<sup>th</sup> ed).; *United States v. Zehrbach*, 47 F.3d 1252 (3d Cir. 1995).

*In the context of a bankruptcy case, an act is done fraudulently if it is done with the specific intent to defraud the creditors of the bankrupt entity or with the specific intent to defraud the United States or the Trustee in the bankruptcy concerning their right and governmental function of regulating bankruptcies and fairly distributing the assets of the bankrupt estate. To act with fraudulent intent means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself.<sup>2</sup>*

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<sup>2</sup>*Adapted from O'Malley, Grenig and Lee, Federal Jury Practice and Instructions §16.08 (5<sup>th</sup> ed.); United States v. Zehrbach, 47 F.3d 1252 (3d Cir. 1995).*

**GOOD FAITH DEFINED - DEFENDANT'S REQUEST**

*The "good faith" of a defendant is a complete defense to the charges of making false oaths contained in Counts 1 and 2 of the indictment because good faith on the part of the defendant is, simply, inconsistent with the intent to defraud.*

*A person acts with fraudulent intent and without good faith when he acts with a purpose to deceive or cheat and so as to deprive another person of a right or property.*

*The law is written to subject to criminal punishment only those people who act "knowingly and fraudulently."*

*While the term "good faith" has no precise definition, it encompasses, among other things, a belief or opinion honestly held, an absence of malice or ill will, and an intention to avoid taking unfair advantage of another. It also includes good faith mistakes.*

*In determining whether or not the government has proven that the defendant acted with an intent to knowingly and fraudulently make a false statement or whether he acted in good faith, you must consider all of the evidence received in the case bearing on the defendant's state of mind.*

*The burden of proving good faith does not rest with the defendant because the defendant does not have any obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted knowingly or fraudulently in making a false statement.*

*Now the defendant may contend that he did not act with the specific intent to commit the crime with which he is charged, since he acted in good faith.*

*If the evidence in the case leaves the jury with a reasonable doubt as to whether the defendant acted knowingly or fraudulently or in good faith, the jury must acquit the defendant.<sup>3</sup>*

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<sup>3</sup>*Adapted from O'Malley, Grenig and Lee, Federal Jury Practice and Instructions §19.06 (5<sup>th</sup> ed).*



**GOOD FAITH - DEFINED (GOVERNMENT'S VERSION)**

Should the Court determine to grant the defendant's request for a good faith instruction and the evidence warrants a good faith instruction, the government proposes using the entirety of the instruction adapted by the defendant, as follows: Those portions in bold are also in the defendant's instruction

**The "good faith" of the defendant is a complete defense to the bankruptcy fraud charges in Counts 1 and 2 of the Indictment because good faith on the part of the defendant is, simply inconsistent with** acting knowingly and fraudulently as alleged in that charge.

A person who acts, or causes another person to act, on a belief or an opinion honestly held is not punishable under this statute merely because the belief or opinion turns out to be inaccurate, incorrect, or wrong. An honest mistake in judgment or an honest error in management does not rise to the level of criminal conduct.

A defendant does not act in "good faith" if, even though he honestly holds a certain opinion or belief, that the defendant also knowingly makes false or fraudulent pretenses, representations, or promises to others.

**The law is written to subject to criminal punishment only those people who act "knowingly and fraudulently."**

**While the term "good faith" has no precise definition, it encompasses, among other things, a belief or opinion honestly held, an absence of malice or ill will, and an intention to avoid taking unfair advantage of another [].**

**In determining whether or not the government has proven that the defendant acted with an intent to knowingly and fraudulently make a false statement or whether he acted in good faith,**

the jury must consider all of the evidence received in the case bearing on the defendant's state of mind.

The burden of proving good faith does not rest with the defendant because the defendant does not any obligation to prove anything in this case. It is the government's burden to prove to you, beyond a reasonable doubt, that the defendant acted knowingly and fraudulently in making a false statement.

If the evidence in the case leaves the jury with a reasonable doubt as to whether the defendant acted knowingly and fraudulently or in good faith, the jury must acquit the defendant.<sup>4</sup>

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<sup>4</sup>O'Malley, Grenig and Lee, Federal Jury Practice and Instructions §19.06 (5<sup>th</sup> ed).

**ON OR ABOUT**

Next, I want to say a word about the dates mentioned in the Indictment.

The Indictment charges that the crimes happened "on or about" a particular date. The Government does not have to prove that the crime happened on that exact date. But the Government must prove that the crime happened reasonably close to that date.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §2.04 (2005).

**EACH COUNT TO BE CONSIDERED SEPARATELY**

A separate crime is charged in each count of the Indictment. Each count and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the crimes charged against him should not control your verdict as to any other count.

## **CONSIDERATION OF EVIDENCE**

### **INTRODUCTION**

That concludes the part of my instructions explaining the elements of the crimes charged. Next I will explain some rules that you must use in considering some of the testimony and evidence.

### **NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §7.01 (2005).

**TRANSCRIPTIONS OF TAPE RECORDINGS**

You have heard some videotape recordings that were received in evidence, and you were given some written transcripts of those videotapes.

Keep in mind that the transcripts are not evidence. They were given to you only as a guide to help you follow what was being said. The videotapes themselves are the evidence. If you noticed any differences between what you heard on the videotapes and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of the videotapes, you must ignore the transcripts as far as those parts are concerned.

**NOTES**

Pattern Criminal Jury Instruction, 6th Circuit §7.17 (2005).

**EXPERT TESTIMONY**

You have heard the testimony of Andrew Vara, an expert witness. An expert witness has special knowledge or experience that allows the witness to give an opinion.

You do not have to accept an expert's opinion. In deciding how much weight to give it, you should consider the witness's qualifications and how he reached his conclusions.

Remember that you alone decide how much of a witness's testimony to believe, and how much weight it deserves.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit §7.03 (2005).

**OTHER ACTS OF THE DEFENDANT**

You have heard testimony that the defendant committed acts other than the ones charged in the Indictment. If you find the defendant did those acts, you can consider the evidence only as it relates to the government's claim on the defendant's [intent, motive, opportunity, preparation, plan, knowledge, identity, absence of mistake, absence of accident]. You must not consider it for any other purpose.

Remember that the defendant is on trial here only for bankruptcy fraud, not for other acts. Do not return a guilty verdict unless the government proves the crimes charged in the Indictment beyond a reasonable doubt.

**NOTES**

Pattern Criminal Jury Instruction 6<sup>th</sup> Cir. 7.13 (2005).



**IMPEACHMENT BY PRIOR INCONSISTENT STATEMENT NOT UNDER OATH**

You have heard the testimony of \_\_\_\_\_. You have also heard that before this trial he/she made a statement that may be different from his/her testimony here in court.

This earlier statement was brought to your attention only to help you decide how believable his/her testimony was. You cannot use it as proof of anything else. You can only use it as one way of evaluating his/her testimony here in court.

**NOTES**

Pattern Criminal Jury Instructions 6<sup>th</sup> Cir. 7.04 (2005).

**DEFENDANT'S ELECTION NOT TO TESTIFY [OR PRESENT EVIDENCE]**

A defendant has an absolute right not to testify [or present evidence]. The fact that he did not testify [or present evidence] cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the Government to prove the defendant guilty beyond a reasonable doubt. It is not up to the defendant to prove that he is innocent.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §7.02A (2005).

**DEFENDANT'S TESTIMONY**

You have heard the defendant testify. The defendant's credibility should be judged in the same way as any other witness.

**NOTES**

*Adapted from Pattern Criminal Jury Instructions, Sixth Circuit § 7.02B (2005).*

**DELIBERATIONS AND VERDICT**

**INTRODUCTION**

That concludes the part of my instructions explaining the rules for considering some of the testimony and evidence. Now let me finish up by explaining some things about your deliberations in the jury room, and your possible verdicts.

Once you start deliberating, do not talk to the jury officer, or to me, or to anyone else except each other about the case. If you have any questions or messages, you must write them down on a piece of paper, sign them, and then give them to the jury officer. The officer will give them to me, and I will respond as soon as I can. I may have to talk to the lawyers about what you have asked, so it may take me some time to get back to you. Any questions or messages normally should be sent to me through your foreperson.

One more thing about messages. Do not ever write down or tell anyone how you stand on your votes. For example, do not write down or tell anyone that you are split 6-6, or 8-4, or whatever your vote happens to be. That should stay secret until you are finished.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §8.01 (2005).

**UNANIMOUS VERDICT**

Your verdict, whether it is guilty or not guilty, must be unanimous.

To find a defendant guilty, every one of you must agree that the Government has overcome the presumption of innocence with evidence that proves his guilt beyond a reasonable doubt as to that Count.

To find him not guilty, every one of you must agree that the Government has failed to convince you beyond a reasonable doubt as to that Count.

Either way, guilty or not guilty, your verdict must be unanimous.

After you have reached unanimous agreement as to the guilt or innocence of the defendant with respect to each of the Counts in the Indictment, you then return to the courtroom. Your foreperson, who by custom of this Court is the No. 1 juror, \_\_\_\_\_, in answer to a question asked by the Clerk, will give your verdict of either "Not Guilty" or "Guilty" with respect to the Indictment.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §8.03 (2005).

**DUTY TO DELIBERATE**

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that--your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds.

Listen carefully to what the other jurors have to say, and then decide for yourself if the Government has proved the defendant guilty beyond a reasonable doubt with respect to each Count.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §8.04 (2005).

**PUNISHMENT**

If you decide that the Government has proved the defendant guilty, then it will be my job to decide what the appropriate punishment should be.

Deciding what the punishment should be is my job, not yours. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict.

Your job is to look at the evidence and decide if the Government has proved the defendant guilty beyond a reasonable doubt.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §8.05 (2005).

**VERDICT FORM**

I have prepared a verdict form that you should use to record your verdict. The form will be given to the foreperson.

If you decided that the Government has proved a particular charge against the defendant beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. If you decide that the Government has not proved a charge against him beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Each of you should then sign the form, put the date on it, and return it to me.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §8.06 (2005).



**COURT HAS NO OPINION**


Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if the Government has proved the defendant guilty beyond a reasonable doubt.

**NOTES**

Pattern Criminal Jury Instructions, 6th Circuit, §8.09 (2005).

Respectfully submitted,

COLM F. CONNOLLY  
United States Attorney

BY:   
Shannon Thee Hanson  
Assistant United States Attorney

Dated: February 22, 2007

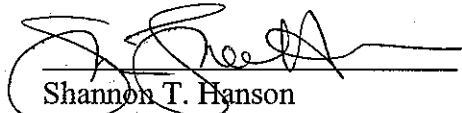
**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Criminal Action No. 6-27-GMS</b>
	)	
<b>ANDREW YAO</b>	)	
<b>Defendant.</b>	)	

**CERTIFICATE OF SERVICE**

I, Shannon T. Hanson, Assistant United States Attorney for the District of Delaware, hereby attest under penalty of perjury that on the 22 day of February, 2007, I electronically filed a REQUEST FOR JURY INSTRUCTIONS with the Clerk of Court using CM/ECF. Said document is available for viewing and downloading from CM/ECF, which will send notification of such filing to the following: and two copies were mailed, via United States mail, to:

Brian McMonagle, Esq.  
McMonagle Perri McHugh and Mischak  
One Penn Square West, Suite 701  
30 S. 15th Street  
Philadelphia, PA 19102

  
\_\_\_\_\_  
Shannon T. Hanson  
Assistant United States Attorney